Argentina Passes Far-Reaching Gender-Identity, Death-with-Dignity Laws

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Argentina has recently taken two significant steps toward consolidating a policy that advances human rights. On May 9, Congress passed, almost unanimously, the "death-with-dignity" and "gender-identity" laws.

The first law allows patients with irreversible illnesses to choose to avoid "futile life-support treatment" that prolongs life even when there is no chance for improvement in the person's health. The law ratifies the principle of "freedom of choice," by stipulating that the patient has the "right to accept or reject specific medical or biological treatments or procedures" when it is clear that they would not change the person's condition.

In passing the second law, the state committed to respect gender self-determination for every citizen, and, as a consequence, to guarantee their access to health-care procedures needed to change their body to conform to their self-perceived gender.

The Catholic Church did not deploy its enormous lobbying power and let legislators act according to their conscience. Governing party Sen. Marcelo Fuentes—a sponsor of both measures—said, "What's happening is that the Conferencia Episcopal is preparing to wage a single battle when it objects, as it has already announced, to all the modifications that will be made to the Código Civil, and at that point it will be able to challenge not only the concepts of death with dignity and gender identity but also the laws regarding legalized abortion and marriage equality."

Changes began in 2009

In December 2009, while President Cristina Fernández de Kirchner's administration was providing the impetus for the trials of military and police who violated human rights during the 1976-1983 dictatorship and the judiciary for the first time was beginning to charge civilian accomplices of the de facto regime, Congress approved a series of laws that put Argentina at the forefront globally in promoting human rights.

In December 2009, just 29 months ago, the patient's rights law (Ley 26.529) was passed, which enshrined the now-ratified principle of patient freedom of choice regarding treatment. In 2010, Ley 26.618 established marriage equality, allowing same-sex couples to form a household with all the rights of heterosexual couples, including the possibility of adopting children (NotiSur, July 30, 2010).

Later in 2010, the mental health law (Ley 26.657) was passed, which had few precedents in the world. It recognizes the autonomy of persons with mental illness and their right to make decisions, and it recommends hospitalization as a treatment option only "in exceptional situations and in general hospitals." In addition to discouraging indefinite internment, the law prohibits "creating new psychiatric institutions with asylum-like characteristics." Thus, insane asylums disappeared.
To close a far-reaching chapter, the government named five jurists—a member of the Corte Suprema de Justicia (CSJ), one governing-party member, and three members of the opposition—to work on reforming the Código Penal with only one precondition, which all five accepted, that, in the new code, life rather than property would have the highest value.

**Death-with-dignity law has wide support**

The death-with-dignity law was welcomed by patients and their relatives who had long fought for that possibility, often in extreme and painful situations. It was also welcomed by members of certain religious groups, such as the Jehovah's Witnesses, who do not believe in receiving blood transfusions but who, until the law went into effect, had to go through cumbersome legal hoops to refuse a transfusion.

Besides abolishing the application of punishments or sanctions for doctors who help patients carry out their wishes, the law establishes that, in the case of patients with physical or psychological limitations, "futile life-support treatment" can be avoided with the consent of the patient's spouse or partner, a child over 18 years of age, parents, or any other blood relative.

Patients can leave detailed "advance health-care directives," which must be honored by the doctor in charge. The patient can revoke the decision at any time.

"What we are doing is responding to a social demand regarding many situations in the country, and adhering to international treaties. The state is obliged to respect the right to life and, consequently, the right to a dignified death," said Sen. José Cano, president of the Comisión de Salud. The lawmaker—a member of the Unión Cívica Radical (UCR) congressional bloc—explained that under no circumstance would providers of social services, or insurance companies, or the state decide these matters but rather the patient or the patient's relatives.

**Right to withhold nutrition and hydration had some opposition**

The only point that was challenged by some lawmakers, and the only one not passed unanimously, was the issue of withholding a patient's hydration and nutrition. Opponents said that this is not consistent with the concept of a dignified death because the person could suffer a painful death by starvation and dehydration.

Defenders said that the law's text is very specific in stipulating under what circumstances nutrition and hydration can be withdrawn, which is when "their only effect is to prolong the patient's irreversible and incurable terminal state."

Although, at the time, the Catholic hierarchy made no public objections, lawmakers sponsoring the law were careful to explain that it allows neither euthanasia nor assisted suicide, both of which are and remain illegal. "The patient's ability to reject or consent to these procedures [hydration and nutrition] is also a question of human rights. What we are doing is not approving euthanasia or assisted suicide but rather guaranteeing the patient's right to decide about their quality of life," said Sen. Daniel Filmus.

During a forum on scientific information following the law's passage, specialist Juan Carlos Tealdi, director of the state Universidad de Buenos Aires medical school's bioethics program, said that the law "does not violate any of the country's bioethical principles."
When asked about the point that most irritated conservative sectors—allowing the withdrawal of nutrition and hydration for a patient with an irreversible condition—Tealdi said, "There comes a moment when medicine's purpose of saving life is modified when nothing more can be done, and then the perspective changes and the purpose is for the person to die in the best way possible. We must understand that withholding food and water can help the patient have a better death."

"Keeping a terminal patient very hydrated increases the suffering because they remain lucid," added Tealdi. "If hydration is gradually reduced, the sick person's senses diminish and they have a better death, without pain and without the anxiety of knowing that their death is imminent. We come from a culture that sanctifies life at all costs, a concept tied to religious views that opt to preserve any kind of life as opposed to the concept of quality of life."

In that context, and recalling the hierarchy's qualms regarding modifying the Código Civil, Sen. Fuentes questioned what he called "religious extortion" and the "pulpit syndrome," saying, "We must recognize that the law is secular."

Self-determination key in gender identity
The new law defines gender identity as "the internal and individual experience of gender as each person feels it, an experience that can correspond or not to the sex assigned at birth, and includes the personal experience of the body." That, says the law, "can involve modifying the body's appearance or function through pharmacological, surgical, or other means—practices that will be obligatory for public and private health systems—as long as it is freely chosen."

The law also refers to other expressions of gender, "such as clothing, ways of speaking, and mannerisms." Persons 18 years of age and over will be able to change their legal information—name, photograph, and sex—on the national identity document (documento nacional de identidad, DNI). The new law foresees judicial intervention only in the case of minors who want a new document or to undergo hormonal treatment or a partial or total sex-change operation and whose parents are opposed.

The laws includes an innovative concept, the "child's lawyer," which specialists say is "very good because it coincides with the law for the protection of children and adolescents." In these cases, the judiciary's role will be to resolve conflicts between children and parents.

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